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Attorneys for Defendant PHH Mortgage Corporation

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

ELVIS A. JOHNSON,

Plaintiff,

-vs-

PHH MORTGAGE CORPORATION,
AND DOES I-V,

Defendants.

Cause No. CV _____

**NOTICE OF REMOVAL OF CIVIL
ACTION UNDER 28 U.S.C. § 1441
(FEDERAL QUESTION)**

Defendant, PHH Mortgage Corporation (“PHH”), gives notice of removal of the above-captioned case to the United States District Court for the District of Montana, Helena Division, pursuant to 28 U.S.C. §§ 1331, 1441(a), and Local Federal Rule 3.3. In support of this Notice of Removal, PHH affirmatively alleges:

1. On June 7, 2016, Plaintiff Elvis A. Johnson filed an action against PHH entitled *Elvis A. Johnson v. PHH Mortgage Corporation and Does I-V*, Cause No. BDV-2016-459, in the Montana First Judicial District Court, Lewis and Clark County, State of Montana.

2. Service of the Complaint was effectuated upon PHH through Corporation Service Company in Mt. Laurel, New Jersey on June 28, 2016. This Notice of Removal is filed within thirty (30) days after of such service, in compliance with 28 U.S.C. § 1446(b).

3. No Defendant has filed a responsive pleading to the Complaint. PHH has not filed an Answer to the Complaint per an extension agreement with the Plaintiff, by its counsel of record.

4. The Complaint raises a federal question within the original jurisdiction of this Federal District Court, in that it alleges violations of the Equal Credit Opportunity Act, codified at 15 U.S.C. § 1691 (Complaint, ¶¶ 81-88). The district courts have original jurisdiction over civil actions arising under the laws of the United States pursuant to 28 U.S.C. § 1331, and are specifically granted original jurisdiction over any action arising under the Equal Credit Opportunity Act, pursuant to 15 U.S.C. § 1691(e).

5. Alternatively, PHH reserves the right to amend this Notice of Removal to assert that this Court has original jurisdiction over this civil action pursuant 28 U.S.C. § 1332, if the amount in controversy is in excess of \$75,000. As alleged in the Complaint, the Plaintiff is a resident of Montana (Complaint, ¶ 1). Defendant PHH is organized under the law of New Jersey (Complaint ¶2), with its principal place of business in New Jersey. The amount in controversy cannot be determined at this time, as the Complaint does not specifically allege the amount in dispute. PHH anticipates that the amount in controversy may exceed \$75,000, as the Complaint seeks several categories of damages including: all monetary, property and actual damages, including those for emotional distress, loss of quality of life, embarrassment, and loss of time; treble damages pursuant to M.C.A § 30-14-133; attorney's fees; and punitive damages (Complaint, Prayer for Relief, ¶¶ 1-4). Accordingly, PHH may discover the amount in controversy is in excess of \$75,000 in Plaintiff's Preliminary Pretrial Statement, Initial Disclosure, or subsequent discovery. Therefore, PHH reserves the right to amend this petition to more specifically set out its basis for removal under 28 U.S.C. § 1332.

6. Removal is proper pursuant to 28 U.S.C. § 1441, since this Federal District Court would have original jurisdiction over this civil action involving the

Equal Credit Opportunity Act, pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1691(e).

7. Venue is proper in the United States District Court for the District of Montana, Helena Division, pursuant to 28 U.S.C. § 1391(b)(2).

8. Consent of removal from defendants Does I-V is not required, pursuant to 28 U.S.C. § 1446(b)(2)(C).

9. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and contains a short and plain statement of the grounds for removal, together with true and correct copies of all process, pleadings, and orders served upon Defendants, attached hereto as Exhibit A.

WHEREFORE, PHH Mortgage Corporation respectfully requests that this Court accept jurisdiction of this action currently pending in the First Judicial District, Lewis and Clark County, of the State of Montana.

DATED this 27th day of July, 2016.

MOULTON BELLINGHAM PC

By: /s/ Doug James
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Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was duly served upon the following counsel of record by depositing the same, postage paid, in the United States mail this 27th day of July, 2016.

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